IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10539 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NISAR AHMED ABBASMIYA MALEK

Versus

AMC, THROUGH MUNICIPAL COMMISSIONER

Appearance:

MR GM JOSHI for Petitioner

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 05/05/2000

ORAL JUDGEMENT :

Rule. Mr.Munshaw, learned advocate waives service of the rule on behalf of respondent no.1.

2. The present petition is filed by the petitioner being aggrieved of non publication of the select list/ waiting list even after several representations made by the petitioner. It is the case of the petitioner that an advertisement was issued by the Ahmedabad Municipal

Corporation (hereinafter referred to as "the Corporation") on 26.4.1996 for nine posts of Junior Legal Assistant. Out of these nine posts, 1 post is reserved for SC, 1 for ST, 2 for Socially and Economically Backward Classes (SEBC) and 5 for general category. It is the case of the petitioner that the petitioner possessed requisite qualifications as asked for in the said advertisement. Hence he applied for the post in question and was called for the interview. The petitioner was interviewed on 12.2.1997. It is the case of the petitioner that the respondent Corporation who is the "State" within the meaning of Article 12 of the Constitution of India did not publish the select list/waiting list. It is stated by the petitioner that by a Resolution No.4636 dated 22.5.1997, the respondent corporation appointed 9 persons. (In fact, the cause of action arose in favour of the petitioner on that day when these nine persons came to be appointed by the aforesaid Resolution No.4636 dated 22.5.1997. However, it is not on record as to what steps did the petitioner take immediately thereafter.) The petitioner proceeds to mention that during and after the probation period, three persons had either left the job or were terminated and thus, there were vacant posts.

3. As it is submitted by the petitioner, the petitioner came in action only when the petitioner came to know that the respondent corporation had made appointments by bypassing the selection in the order of merit. The petitioner made a representation dated 10.12.1998, i.e. after almost one and a half year from the date of the aforesaid Resolution No.4636 dated 22.5.1997. A copy of the said representation dated 10.12.1998 is produced at Annexure 'C' to the petition at page 16. It is mentioned in the said representation that the petitioner has information to the effect that the name of the petitioner appeared in the select list, prepared by the Staff Selection Committee and that the petitioner has not received an appointment order. It is further stated in the said representation that on an inquiry it was found that the Central Office had placed a Resolution for appointment of the petitioner on the post of Junior Legal Assistant before the expiry of the period of select list for seeking approval before the competent authority. However, for the misfortune of the petitioner, said file was not signed by the competent authority and in the meanwhile the period of validity of the list expired and therefore, the appointment order could not be issued. It is further stated in the said representation that as the department had already completed the procedure for appointing the petitioner on

the post of Junior Legal Assistant before the expiry of period of limitation of the select list, the injustice done to the petitioner be redressed and that the petitioner be appointed as Junior Legal Assistant.

4. The petitioner has further stated that after the said representation made by the petitioner, the petitioner made a complaint on 2.2.1999, i.e. again after almost two months. It is also the case of the petitioner that on the basis of the said complaint, the then Municipal Commissioner instituted an inquiry in the matter of selection and appointment of the Legal Assistants, but the outcome is not known to the petitioner.

5. It is also the case of the petitioner that thereafter the petitioner addressed a Legal Notice dated 30.11.1999, i.e. almost after 11 months calling upon the respondent corporation to furnish details as to what weightage was given to each of the candidates and also to submit a copy of the select list/ waiting list.

6. This court had issued notice on 19.1.2000 making it returnable on 16.2.2000. However, the affidavit in reply dated 14.3.2000 was served to the learned advocate for the petitioner on 16.3.2000 and on perusal of the same, the learned advocate for the petitioner submitted that the advertisement was issued for as many as nine posts on 26.4.1996. When the appointments came to be made by the aforesaid Resolution No.4636 dated 22.5.1997, as many as three posts which were created by a Resolution No.2127 of the Standing Committee dated 29.3.1997, were among those nine appointments. It was the submission of the learned advocate for the petitioner that in light of that, the three posts which were advertised on 26.4.1996 were not filled in and therefore, there remained three posts to be filled in, which existed on the date of the advertisement, i.e. 26.4.1996. It is also the case of the petitioner that of these nine appointees, one Naik Deepak Kumar Natwarlal, whose name is at serial no.4 left the job during the period of probation within the period of six months, whereas the services of one Rajesh R. Bagadi whose name is at serial no.7, were terminated by the corporation. While one Narendra Sharma, whose serial no. is 9 in the Resolution left the job because of his appointment elsewhere. The Resolution by which these appointments were made is at Annexure 'B' to the petition. It was also submitted by the learned advocate for the petitioner that ignoring the case of Mr.Naik Deepak Kumar Natwarlal, who was appointed against the newly created post by Resolution No.2127 dated 29.3.1997

of the Standing Committee, at least two persons who were appointed against the vacancies that existed on the date of advertisement have left. Therefore, there were five vacancies on which the respondent corporation ought to have considered the case of the petitioner. The learned advocate for the petitioner has also alleged that the respondent corporation has gone to the extent of avoiding the persons placed in the selection list, by favouring those persons who are not even possessed minimum required qualifications. It is also alleged that the inquiry report made in the matter of selection and appointment to the post of Legal Assistant is not made public and that the respondent corporation is not acting bona fide as an ideal employer inasmuch as even after several representations the select list is not made public.

7. The petitioner has prayed for an appropriate writ, directing the respondent to produce before this Court the list of candidates who had appeared in the interview for the post of Legal Assistant and also the comparative chart of such candidates based on their qualifications, experience of each one and the select list/ waiting list prepared by the respondent Corporation together with the details of the appointment given from such select list/ waiting list. The petitioner has also prayed for a direction directing the respondent corporation to give appointment to the petitioner on the basis of his qualification and performance in the interview, if his name appears in the select list prepared by the respondent Corporation.

8. On 18.4.2000, Mr.Munshaw, the learned advocate for the respondent sought time to clarify the position about the persons who are appointed against the vacancies which were contemplated in the advertisement dated 26.4.1996, from the select list which was prepared pursuant to the Resolution dated 17.4.1997 of the Staff Selection Committee. A further affidavit in reply on behalf of the respondent Corporation is filed which is sworn on 1.5.2000, a copy of which is also served to the learned advocate for the petitioner on 3.5.2000. The deponent, Shri Vijaysinh A. Vaghela, Officer on Special Duty of the respondent Corporation has filed the said affidavit. Para 2 of the said affidavit in reply reads as under :

> "It is mot respectfully stated that initially there was just one post of Junior Legal Assistant in the respondent, Ahmedabad Municipal Corporation, but later on due to increasing litigation in different departments of the

respondent Corporation, two Resolutions were passed on 2nd March 1996, deciding to create in all 9 posts of Junior Legal Assistant in the Property Tax Deptt. It is stated that one post was already in existence as mentioned hereinabove in the Legal Deptt., but it was kept in abeyance. It is stated that apart from creation of 9 posts of Junior Legal Asstt to be posted in the Property Tax Deptt., the respondent Corporation had also created 5 posts of Junior Legal Asstt. in the Legal Deptt. and after careful consideration of the newly created posts as well as future requirements, it was decided to issue an advt. in the newspaper for the recruitment of 9 Junior Legal Asstts. and the recruitment was to be made after following Roster System. It is stated that out of 9 advertised posts, one post was to be filled in through Scheduled Tribe candidate, one post through Scheduled Caste candidate, two posts through Socially and Educationally Backward Class and five posts through general category candidates. It is stated that accordingly an advertisement was published in the newspaper for the 9 posts. At this stage, it is pertinent to note that as mentioned hereinabove, the administrative proposal for recreating new posts in the Legal Deptt. was positively considered by the Standing Committee of the respondent Corporation and it passed a Resolution bearing no.2127 on 29th March 1997 for creation of 4 posts of Junior Legal Asstt. in the Legal Deptt. and the said Resolution was confirmed by the General Board of the respondent Corporation on 30th April 1997."

9. The affidavit in reply has also stated in para 4 that,

".. .. It is also stated that one Mr.Sharma Narendraprasad Surendraprasad had resigned on 23rd December 1997 and accordingly in all 9 posts are filed up through the said list. It is stated that subsequently the list is not at all operated."

The Circular No.50/97- 98 dated 26.8.1997 issued by the Central Office under the signature of the Municipal Commissioner is also annexed to the petition mentions that the period of validity of selection/ waiting list prepared by the Staff Selection/ Panel Committee is by and large one year and the same can be

extended for a further period of six months with the approval of the Municipal Commissioner. It is further stated in the said circular that during this period in many cases the candidates cannot be appointed from the select list. waiting list. Therefore, on expiry of the period of the select list a fresh procedure for preparing select list is required to be undertaken. It is then stated in the circular that earlier by Circular No.25 of 29th July 1969, the period for which the select list/ waiting list is to remain in operation is prescribed as 2 years and with a view to see that unnecessary expenses can be avoided, the validity period of select list/ waiting list prepared by the Staff Selection Committee is decided to be that of 2 years. It is contended on the basis of the aforesaid circular that the select list which was prepared by Resolution No.3 dated 17.4.1997 of the Staff Selection Committee does not remain operative and therefore, no relief can be granted to the petitioner.

10. The learned advocate for the petitioner placed reliance on the decision of this Court in the matter of Pandya Jashwantlal M. & others v. District Supdt. of Police, Sabarkantha & ors., 1990(1) GLR 515. The learned for the petitioner placed heavy reliance on the latter part of para 4 of the judgement which reads as under :

> ".. .. In a democratic society in which equality of opportunity for employment to office under the State is enshrined in the Constitution which is supreme law of the land, it can hardly be contended and accepted that in a public employment by the State, the selected candidate has absolutely no right for being appointed, especially when the vacancy exists and other reasons like misconduct, disqualification, etc. for denying the appointment do not exist. If that is accepted it would be doing violence to the provisions of Arts.14 and 16 of the Constitution of India. Article 16 of the Constitution specifically provides for the equality of the opportunity for all citizens in the matter relating to the employment or appointment to any office under the State. If select list operates, vacancy exists and the selected candidate is not appointed to the post despite no other disqualification and subsequently other persons are sought to be selected for the same vacant post, it would amount to denial of equality of opportunity in the employment to the office under the State and

would be violative of Arts.14 and 16 of the Constitution of India."

The said judgement has no application to the facts of the present case. Therefore, the same cannot be of any assistance to the petitioner.

11. On the other hand the learned advocate for the respondent relied upon the decision of the Honourable Supreme Court in the matter of State of Bihar and another. v. Madan Mohan Singh and others, AIR 1994 SC 765, for the proposition that, "Select list gets exhausted on completion of selection process under particular advertisement." The learned advocate for the respondent also placed reliance on a judgement in the matter of Madanlal and others v. State of J & K and others, reported in (1995) 3 SCC 486. It is submitted by the learned advocate for the respondent that if the requisition for recruitment is for 11 vacancies and merit list is prepared for 20 candidates, the moment 11 vacancies are filled in from the merit list, the list gets exhausted, or if during the span of one year from the date of publication of such list, all the 11 vacancies are not filled in, the moment the year is over, the list gets exhausted. In either event, thereafter, if further vacancies are to be filled in or remaining vacancies are to be filled in after one year, a fresh process of recruitment is to be initiated giving a fresh opportunity to all the open market candidates to compete. The learned advocate for the respondent also placed reliance on the judgement dated 9.5.1997 of this Court (Coram : S.K. Keshote, J.) in Special Civil Application No.175 of 1989.

12. All these judgements are not discussed in detail inasmuch as the petitioner fails on the ground of non action on the part of the petitioner, soonafter the cause of action arose, if at all it can be said to have arisen on 22.5.1997 when by Resolution No.4636 dated 22.5.1997, nine persons came to be appointed. Instead of taking any action, the petitioner decided to wait for almost one and half year and made representation for the first time on 10.12.1998 and thereafter he chose to file a complaint on 2.2.1999 on the basis of which according to the petitioner an inquiry was instituted by the Municipal Commissioner. The petitioner took first legal step on 30.9.1999 when he served a legal notice.

13. In view of the aforesaid facts and situation, no relief can be granted to the petitioner under the discretionary power of this Court under Article 226 of

the Constitution of India. In the result the petition fails. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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